



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
Tuesday
Thursday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
MARCH 2, 2004
(Approved as amended 4/6/04)**

PRESENT: Forrest Esenwine, Chairman; Jack Dearborn, Vice Chairman; Leon Methot; June Purington; Tim Galvin; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Andrew Antognoni; Kathi Smestad; William Weber; Marlene Grossman; Ginger Esenwine

I. CALL TO ORDER:

Chairman Forrest Esenwine called this meeting to order at the Weare Town Office Building at 7:30 PM. Chairman Esenwine explained the process by which the board conducts business. Chairman Esenwine appointed Tim Galvin as a full member for tonight's hearing.

II. PUBLIC HEARINGS:

Case #0304 Andrew Antognoni
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to build a single family home.
Tax Map 401-034 Pleasant Pond Road (Class VI Road)

Chairman Esenwine moved to accept the application as complete, Tim Galvin seconded the motion, all in favor. Mr. Antognoni was present and explained that they are looking to build a single family home on Pleasant Pond Road, which is a Class VI road. Mr. Antognoni then went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting this variance because: By granting this variance the surrounding property value will be enhanced. The proposed structure is an attractive single family home with a farmer's porch; it will be approximately two thousand square feet with minimal clearing of the 8.2 acres. (Please see drawing).
2. That the granting of the variance **will not** be contrary to the public interest because: the proposed structure will not affect the public with the exception of upgrading the road, there will be a slight clearing of woods making a much neater appearance than the overgrown and non-maintained road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:

- a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: There is enough land to this lot to build the proposed structure; which will also suit the surroundings of the Town.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: Class six roads are town owned but not maintained. There will be a single family living on lot, minimally affecting the road use.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: There will be ample distance between lot lines and the actual structure.
4. That by the granting this variance, substantial justice **will be** done because: There are currently other residential properties on Pleasant Pond Road and abutting the lot, all on a Class 6 road. There have been other homes permitted on Class 6 roads in Weare, to remain equal this variance should be granted.
 5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because: The use of the lot will be for a single family home only. This does not interfere with the spirit of the ordinance.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 7:55 PM.

Case #0404 NWS Storage, LLP

Variance, Article 14, Section 14.1

Variance, Article 24, Section 24.5.2

Applicant is requesting permission to create a residential lot off of John Connor Road and 2 commercial lots off North Stark Highway.

Bill Weber and Marlene Grossman were present for this case. Chairman Esenwine moved to accept the application as complete, Leon Methot seconded the motion, all in favor. Mr. Weber explained that this application is a request for two variances. The first variance is to create a 2+ acre lot on an unpaved Town road (John Connor Road). Mr. Weber further explained that he has met with Carl Knapp, Public Works Director and instead of paving 200 feet of John Connor Road at the Route 114 (North Stark Highway) intersection Mr. Weber would rebuild the intersection and eliminate the dangerous situation that exists today. Mr. Knapp wrote a memo to the zoning board that states that Mr. Weber has agreed to reconstruct the intersection bringing John Connor Road out at a 90 degree angle to Route 114. Mr. Knapp also pointed out that there are no plans to pave any portion of John Connor Road, which is why he would like Mr. Weber to rebuild the

intersection versus paving a small portion of the road. Mr. Weber then went through the five points of hardship that pertain to this variance request:

1. That there **will not** be a diminution of value or surrounding properties as a result of the granting of this variance because:
 - a. Currently the north end of John Connor Road is not paved and the current traffic flow off from Route 114 travels excessively fast when entering John Connor Road. As such the paving of this first 200' will only act as a reason for cars to go even faster when exiting 114, creating more unsafe conditions.
 - b. By paving the first two hundred feet the Town will incur the expense of maintaining something that will have a shorter life expectancy than the existing gravel surface.
 - c. Currently the houses that are on or in the John Connor Road area front on a paved road, Route 114, except one which fronts on the gravel surface of John Connor Road which was built in 2001. If the road is left as is (gravel) the property values will all have the same benchmark road assessment, "gravel frontage". If one home has paved frontage there may be a decrease in the value of the other home on John Connor Road.
 - d. The John Connor Road north section does not appear to be wide enough to meet Town specifications for pavement width and drainage concerns.
 - e. The sheeting action that rain water will create as it crosses the pavement will wash sediment and road debris into the adjacent wetlands. Currently the gravel surface acts as a filter for the wetlands.
2. That the granting of this **will not** be contrary to public interest because: the public interest can only be served positively by leaving the surface as is.
3. That enforcement of the zoning ordinance **will** create an unnecessary hardship in that the zoning restriction:
 - a. Will as applied have the petitioner leaving his driveway directly onto an uncontrolled and rarely policed dangerous intersection.
 - b. In discussing this with the road agent, Carl Knapp, he would like to change the intersection and make it a "right turn" entry rather than the current "straight" in approach. If this were to happen the paved section would be removed.
 - c. Anything that will keep traffic safer is a positive for everyone. A lot of people walk this road, however, they wish it were safer and slower.
4. That by the granting of this variance, substantial justice **will be** done because: The paving 200' of the north end of John Connor Road will serve no one in a positive aspect.
5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because: The specific facts and circumstances offered above distinguish this request from what the ordinance was designed to do. The positives gained by the Town and its people by paving roads more often than not outweigh the negatives associated with not paving a road. This request outlines and asserts that only negative impact(s) will be created for the petitioner and others.

Being there were no further comments or question on the first part of the application, Mr. Weber continued to part two. Mr. Weber explained that the second part of the application is to request a waiver from the 200' requirement for commercial lots. In this proposal Mr. Weber was proposing to create the storage units on its own lot with 50' and the golf course would be on its separate lot with approximately 61 feet. Both lots have to use a common driveway as he is not allowed any further driveway permits from the State of NH. The current State of NH Driveway permit is for the storage units and a golf course. Mr. Weber stated that he knows the zoning board can't make its judgment based on any financial issue, but he wanted the board to know that the main reason for doing this part is for financing the golf course. The small business administration will not lend money for the golf course with the storage units on them because they classify the storage units as a "passive investment". Mr. Weber was told if he could put the storage units on their own lot they would finance the golf course.

Chairman Esenwine thanked Mr., Weber for that information, but again stated that any variance request can't be granted or denied based on any financial issues. A variance is given to the property and stays with the property.

Mr. Weber added that this same plan is on the planning board agenda for the March 11, 2004 meeting. Mr. Weber then went through the five points of hardship that pertain to the second part as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because:
 - a. There is no physical change planned for the property, as it exists now.
 - b. The zoning classification will not change.
 - c. The storage facility as now built where it is in proximity to the surrounding properties will not change.
 - d. Because the existing storage facility is located so far off of Route 114 the need for 200' of frontage is not now or was ever necessary.
 - e. If the Golf Course were to ever cease existence the potential to offer the Town future conservation land would now become a viable option for the current or future owners of the storage facility due to its ease in division, which may enhance surrounding property values.
2. That the granting of this **will not** be contrary to public interest because:
 - a. The existing storage facility provides a much needed service that the general public has access to. The future golf course will be providing a much needed recreational facility, neither of which need 200 feet of frontage as planned and built.
 - b. The lot for the golf course, 49+ acres is exempt from the 200' frontage because it has more than 10 acres. The proposed lot for the storage facility will have almost 6 acres.
 - c. The proposed lot has no occupants or negative tax impacts to the Town, and yet generates approximately \$6,000 a year in taxes for the Town. The 200' requirement would not change this amount.
3. That enforcement of the zoning ordinance **will** create an unnecessary hardship in that the zoning restriction:

- a. Will as applied make further expansion difficult and hard to control.
 - b. Makes it extremely difficult to separate the golf course from the storage facility in the event of a closing of either entity.
 - c. Will force the petitioner to build an unnecessary Town road.
4. That by the granting of this variance, substantial justice **will** be done because: No single person or the Town will be served in any way by applying the ordinance based on the facts presented.
5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because:
 - a. There will be no change in the use of the property.
 - b. The ordinance favors larger lots (10+ acres) for exemption. The term larger could be applied to an almost 6 acre lot without taking away from the spirit of the ordinance. Although there is no bright line in the ordinance as to where a large lot could be considered it would seem that anything larger than 5 acres would be a viable candidate for this variance.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:40 PM.

Case #0504 Daniel W. Watts
Special Exception, Article 19, Section 19.1.10
Applicant is requesting permission to convert one bedroom upstairs into a kitchen to be used as an in-law apartment.
Tax Map 201-030 57 Concord Stage Road

Naomi informed the board the Mr. Watts called and he got called into work this evening and his wife had surgery today so no one will be able to be here to discuss this. He would like to come back next month. Chairman Esenwine moved to continue this hearing to April 6, 2004, Tim Galvin seconded the motion, all in favor.

III. CASE DECISIONS:

Case #0304 Andrew Antognoni
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to build a single family home.
Tax Map 401-034 Pleasant Pond Road (Class VI Road)
The board proceeded through the five points of hardship. Point #1: Leon Methot moved to accept point #1, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #2: Leon Methot moved to accept point #2, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point's #3a, 3b, 3c: Leon Methot moved to accept points 3a, 3b & 3c, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #4: June Purington moved to

accept point #4, Tim Galvin seconded the motion. Chairman Esenwine stated that he has a problem with the response and would possibly agree with the response only if the property had been owned for a longer period of time. The owners did state that they purchased the property knowing what was expected. Jack Dearborn stated that it is a lot of record, it is the last lot on the road and if he is willing to upgrade the road he has taken care of the life safety requirement. Vote: 4 in favor (Methot, Purington, Dearborn, Galvin) and 1 opposed (Esenwine). Point #5: Chairman Esenwine stated that he felt that the ordinance is clear and the spacing between this house and the last one is a long distance. June Purington moved to accept point #5, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin).

Jack Dearborn moved to grant the variance for Case #0304 with the following conditions:

1. Pleasant Pond Road must be upgraded to a state that the Public Works Director and Fire Chief believe is safe for the passage of emergency vehicles and vehicular traffic.
2. The road improvements must be done and approved by the Public Works Director prior to any building permit being issued.
3. Town of Weare Liability Disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
4. Class VI road sign to be posted at the entrance of the road.

Leon Methot seconded the motion. Vote: 4 in favor (Methot, Purington, Dearborn, Galvin) and 1 opposed (Esenwine).

Case #0404 NWS Storage, LLP
Variance, Article 14, Section 14.1
Variance, Article 24, Section 24.5.2
Applicant is requesting permission to create a residential lot off of John Connor Road and 2 commercial lots off North Stark Highway.

The board wanted to handle this variance in two parts, part a being Article 14.1 and part B being Article 24.5.2. The board went through the five points for part A as follows: Point #1: Leon Methot moved to accept point #1, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #2: June Purington moved to accept point #2, Tim Galvin seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point's #3a, 3b, 3c: Leon Methot moved to accept point's #3a, 3b & 3c, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #4: Chairman Esenwine moved to accept point #4, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #5: June Purington moved to accept point #5, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin).

Jack Dearborn moved to grant the variance for part A of Case #0404, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin).

The board then proceeded through the five points for part B as follows: Point #1: Leon Methot moved to accept point #1, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #2: June Purington moved to accept point #2, Tim Galvin seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point's #3a, 3b, 3c: Leon Methot moved to accept points 3a, 3b & 3c, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #4: Tim Galvin moved to accept point #4, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin). Point #5: Chairman Esenwine moved to accept point #5, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin).

Jack Dearborn moved to accept part B of Case #0404, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Esenwine, Galvin).

IV. OTHER BUSINESS:

FEBRUARY 6, 2004 MINUTES: Chairman Esenwine moved to approve the February 6, 2004 minutes as written, Tim Galvin seconded the motion. Vote: 3 in favor (Dearborn, Esenwine, Galvin) and 2 abstentions (Methot, Purington).

V. ADJOURNMENT:

As there were no further business to come before the board, Leon Methot moved to adjourn at 9:05 PM, Tim Galvin seconded the motion, all in favor.

Respectfully submitted,

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Naomi L. Bolton
Land Use Coordinator